No. 11653.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

OSCAR SCHATTE, RAYMOND E. CONAWAY, ANDREW M. ANDERSON, CHARLES L. DAVIS, HARRY BEAL, ARTHUR DJERF, EWALD K. ALBRECHT, HARRY L. TALLEY, HARRY DAVIDSON, JOHN L. KIERSTEAD, THOMAS W. HILL, LLOYD C. JACKSON, ALFRED J. WITHERS, JOHN H. ZELL, and EDWARD DERHAM, on Behalf of Themselves and All Others Similarily Situated,

Appellants,

vs.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, *et al.*,

Appellees.

OPENING BRIEF OF APPELLANTS.

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Jurisdictional Statement.

The pleadings, facts and statutes which confer original jurisdiction upon the District Court of the United States and appellate jurisdiction upon this Court are as follows:

(1) Statutes Conferring Jurisdiction on the United States District Court (U. S. C. A., Title 28):

"Section 400. (Judicial Code, section 274d.) Declaratory judgments authorized; procedure.

"(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United

States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such."

"Section 41. (Judicial Code, section 24, amended.) Original jurisdiction. The district courts shall have original jurisdiction as follows:

"(1) United States as plaintiff; civil suits at common law or in equity. First. Of all suits of a civil nature, at common law or in equity, * * * where the matter in controversy exceeds, exclusive of interests and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, * * *"

"(8) Suits for violation of interstate commerce laws. Eighth. Of all suits and proceedings arising under any law regulating commerce. (Mar. 3, 1911, c. 231, §24, par. 8, 36 Stat. 1092; Oct. 22, 1913, c. 32, 38 Stat. 219.)"

"(12) Suits concerning civil rights. Twelfth. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 47 of Title 8. (R. S. §563, par. 11; §629, par. 17; Mar. 3, 1911, c. 231, §24, par. 12, 36 Stat. 1092.)"

"(14) Suits to redress deprivation of civil rights. Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. (R. S., §563, par. 12; §629, par. 16; Mar. 3, 1911, c. 231; §24, par. 14, 36 Stat. 1092.)"

"Section 729. Proceedings in vindication of civil rights. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of chapter 3 of Title 8, and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the Constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. (R. S., §722.)"

U. S. C. A., Title 8:

"Section 43. Civil action for deprivation of rights.

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress. (R. S., §1979.)"

"Section 47. Conspiracy to interfere with civil rights.

"(3) If two or more persons in any State or Territory conspire * * * for the purpose of depriving. either directly or indirectly, any person or class of persons of the equal protection of the law, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of

damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R. S., §1980.)"

U. S. C. A., Title 29:

"Section 157. Right of employees as to organization, collective bargaining, etc.

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. July 5, 1935, c. 372, §7, 49 Stat. 452."

Constitution, Amendment V:

"No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *"

Constitution, Amendment XIV:

"Section 1. * * * nor shall any state deprive any person of life, liberty, or property, without due process of law; * * *"

The Labor-Management Relations Act of 1947:

"Section 301 (a) Suits for violation of contracts tween an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Statement of the Case.

The memorandum opinion of the District Court directing that plaintiffs' action be "dismissed for want of jurisdiction," because there was no diversity of citizenship [R. 122], is reported in 70 F. S. Adv. 1008, and printed in full in the appendix hereto [*infra* 8].

In this memorandum opinion the court gave the following general statement of plaintiffs' complaint:

> "This action for a declaratory judgment is brought by sixteen individuals, members of the United Brotherhood of Carpenters and Joiners of America (hereinafter called Carpenters), on behalf of themselves and others similarly situated, to determine and to protect against alleged conspiracy their rights under certain agreements entered into between the motion picture studios, Carpenters, the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada (hereinafter called Stagehands), and others." [R. 122].

The Complaint.

The complaint is referred to in its entirety [R. 2], including its exhibits, because it is all material to the issue of jurisdiction. It is summarized as follows:

The Parties.

The complaint alleges the common concern and interest of all members of the Carpenters Union in the contracts alleged, and that the suit is brought in their behalf as a class [II; R. 4]; that the International Association of Theatre Studio Employees, hereinafter referred to as "IATSE", is a labor union, comprising certain local unions

of persons employed by the defendant Motion Picture Companies, and that Richard F. Walsh, International President of IATSE, and Roy M. Brewer, its International Representative, were its agents [III; R. 4]; that the defendant, United Brotherhood of Carpenters and Joiners of America, hereinafter referred to as "Carpenters Union", is a labor union comprising local unions, particularly Local 946, engaged in performing work for said picture companies; that William L. Hutcheson is its National President, and James Skelton is the business agent of said local [IV; R. 5]; that Conference of Studio Unions was an organization of local unions of various crafts comprising members employed by the motion picture industry, including said Local 946, and that Herbert K. Sorrell was President of said Conference of Studio Unions and agent for its member unions [V; R. 5]; that the various defendant Motion Picture Companies, hereinafter referred to as "Motion Picture Companies", are engaged in the business of making pictures, etc., and that the defendant Association of Motion Picture Producers, Inc., hereinafter referred to as "Producers Association", is a corporation created and maintained by the said companies as their agent in all matters alleged herein [VI; R. 5-6].

Jurisdiction.

The said complaint further alleges that the jurisdiction of this Court is vested by virtue of 28 U. S. C. A. 400, 41 (1), 41 (8), 41 (12) and 41 (14) and 729; 8 U. S. C. A. 43 and 47 (3); 29 U. S. C. A. 157; and the Constitution, Amendments V and XIV; "and that the matter in controversy herein, being the right to work for wages, exceeds the value of three thousand dollars ($3,000.00), exclusive of costs and interest, as to each plaintiff herein, and arises under the Constitution and laws of the United States; and that the acts and conduct of defendants alleged herein has subjected and continues to subject plaintiffs to deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States and with the object of injuring plaintiffs in their persons and property in having and exercising said rights and privileges as citizens of the United States" [VIII, IX, X; R. 7].

Bargaining Agents.

The complaint further alleges that the defendant Carpenters Union is, under the provisions of the National Labor Relations Act, the legally constituted bargaining agent of carpenters employed by defendant Motion Picture Companies; that the defendant IATSE is the legally constituted bargaining agent of stagehands employed by defendant Motion Picture Companies; and that "Both said defendant unions are affiliated with and subdivisions of the parent union organization, the American Federation of Labor" [XI; R. 7-8].

The Controversy.

The complaint further alleges that the controversy involves the allocation of labor to be performed for defendant Motion Picture Companies by members or respective defendant unions, the Carpenters and IATSE, under the terms and provisions of contracts entered into and executed by and with said company defendants and defendant Producers Association, and under the agreements and decisions, findings and awards arrived at pursuant to said arbitration agreements; and that the controversy alleged is not a "labor dispute" over conflicting claims to bargaining rights or any other such issue within the scope of the National Labor Relations Act, defendant unions being recognized by all defendants herein as the legally constituted collective bargaining representatives of their respective members; and that the Labor Board has no jurisdiction either to interpret and adjudicate the terms of said contracts, findings, decisions, and arbitration awards, or to hold hearings and render judgment on the type, class, and nature of services to be rendered by members or respective defendant unions; and that said contracts, decisions, findings, and awards in arbitration involve rights and privileges secured to plaintiffs by the Constitution and laws of the United States [XII; R. 8-9].

To obtain a full determination of the controversy so alleged plaintiffs made all parties concerned defendants in this case, including their own union, The United Brotherhood of Carpenters, etc., and its Local Number 946.

Carpenters Historic Right to Carpenters Work.

The complaint further alleges that since the beginning of the making of motion pictures in the Southern District of California, and until events related hereinafter, plaintiffs and the class for which they sue have been employed by defendant Motion Picture Companies under the terms of succeeding contracts for the performance of any and all carpenter work in connection with the making of motion pictures, including the construction of all sets and stages, platforms, buildings, and parts of buildings, the operation of all wood working machinery and tools, the making of all furniture and wood fixtures, the performing of all trim and mill work, the erection, modeling and remodeling, destruction and dismantling of all scaffolds, platforms, frames, buildings and streets, and the performance of all labor involving the use of carpenter tools [XIII; R. 9].

Contract Between Carpenters and Companies. Exhibit "A."

The complaint further alleges a basic agreement between the defendant Motion Picture Companies and plaintiffs' Carpenters Union, covering rates of pay, tenure, seniority, vacations, and other terms and conditions of employment, and giving members of said Carpenters Union the exclusive right to do any and all carpenters work for said companies; that said agreement was executed on or about November 29, 1926, and has been continued in effect between the parties, with periodic adjustments, supplements and amendments, up to the present time, and that the current contract, referred to as the Beverly Hills interim agreement of July 2, 1946, is attached to the complaint as Exhibit "A" [XIV; R. 9-10, 28-34].

Contracts Between Carpenters and IATSE. Exhibit "B."

The complaint further alleges that beginning in 1921, and continuing until the present time, the Carpenters Union and the IATSE engaged in a series of negotiations between themselves, and with the defendant Motion Picture Companies, and entered into arbitration before the American Federation of Labor, with the view to settling existing disputes and controversies, and that these negotiations have resulted in a series of agreements, decisions, and awards, constituting a fair and practical division of motion picture employment between the Carpenters Unions and IATSE [XV; R. 10].

The complaint further alleges that the first agreement, made on July 9, 1921, under the auspices of Samuel Gompers, attached as Exhibit "B," recited among other things, that "all carpenter work in and around motion picture studios belongs to the carpenters" [XVI, R. 10-37]; that the second agreement, made on February 5, 1925, attached as Exhibit "B" classified the following work as belonging to the carpenters: all trim and mill work on sets and stages; all mill work and carpenter work in connection with studios; all work in carpenter shops; all permanent construction; and all construction work on exterior sets; and as belonging to the IATSE: miniature sets; property building; erection of sets on stages except as above provided; wrecking all sets, exterior and interior; and erecting platforms for lamp operators and camera men on stages [XVII; R. 11-35].

Agreement to Arbitrate.

The complaint further alleges a meeting in Cincinnati from October 20-25, 1945, of the Executive Council of the A. F. of L. and agents and representatives of the defendant Motion Picture Companies, defendant Producers Association, IATSE and Carpenters Union, where they, including all the appellees here, entered into an agreement, hereinafter referred to as the Cincinnati Agreement, whereby the Council directed that the Hollywood strike be terminated, that all employees return to their work immediately, that they attempt to settle their difficulties, and that a committee of three members of the Executive Council of the A. F. of L. investigate and determine "all jurisdictional questions still involved"; and that the said unions "accept as final and binding such decisions and determinations as the Executive Council Committee of Three may finally render." That in compliance therewith, it was agreed between the defendant companies, and Association, and the Carpenters Union, that pending the said arbitration, the carpenters would return to work for, and be reemployed by, the defendant Motion Picture Companies in accordance with said Exhibit "A" contract, and that the IATSE members and permittees be withdrawn, and that the carpenters did so return to work on or about November 1, 1945 [XIX, XX; R. 12-13].

Contract Between Carpenters and IATSE Grips. Exhibit "C."

The complaint further alleges that in pursuance of said Cincinnati Agreement, the Grips' Local 80 of the IATSE, and the Carpenters Local 946, made an agreement on November 13, 1945, attached as Exhibit "C," whereby as stated in the contract, the carpenters would have jurisdiction over all temporary and permanent building construction work, and maintenance, covering any building done for the purpose of photographing; the installing and handling of all hardware and glass; the complete building, erection, re-erection and remodelling of all sets, streets, parts of sets and retakes, including sufficient platforms for shooting same, but not including platforms used exclusively for the camera, lighting equipment and dolly tracks; sets used for process or trick photography to be considered the same as any other set; the building and manufacturing of all grip equipment which is made of wood or wood substitutes; all wood crating for shipping or storing; the operation of all woodworking machinery; the construction, remodelling and erection of all cut-outs, with the exception of fold and hold cut-outs; heavy construction on all wooden diffusing frames; the building or erection and dismantling of all scaffolds for construction, with the exception of tubular steel scaffolding; remodeling of all sets while shooting on studios or on location; the underpinning and construction of all platforms, with the exception of those used exclusively for camera, light and dolly track platforms; and that the grips should have jurisdiction over the handling of all sets and units from the mill to the stage, from stage to stage, from stage to scene dock, from scene dock to mill and from scene dock to stage; the handling and maintenance of all grip equip-

ment; the erection and handling of all fold and hold cut-outs; the construction, maintenance and handling of all diffusing frames, with the exception of heavy construction on wooden frames; the building, erection and dismantling of all tubular steel scaffolding, not to include underpinning, and the construction of platforms, including underpinning, for use exclusively by camera, light equipment, and for supporting dolly tracks; with the statement that this agreement was not intended by either party to reflect the full jurisdiction of these locals in the studios, but that it was intended to reflect the agreement reached between said Carpenters Local 946 and IATSE Grips Local 80 on the jurisdictional points at issue between them [XXI; R. 14, 39-41].

Arbitration, Decision and Award. Exhibit "D."

The complaint further alleges that pursuant to said Cincinnati agreement, said Committee of the Executive Council of the A. F. of L. rendered its decision and award on December 26, 1945, attached as Exhibit "D," allocating the following work to Carpenters: all trim and mill work on sets and stages; all mill work and carpenter work in connection with studios; all work in carpenter shops; all permanent construction; all construction work in exterior sets; and the following work to the IATSE: miniature sets; property building; erection of sets on stage except as above provided; wrecking all sets, exterior and interior; and erecting platforms for lamp operators and camera men on stages [XXIII; R. 14-16, 42].

IATSE Violation of Arbitration Award.

The complaint further alleges that with the design and purpose of violating and defeating the said Cincinnati Agreement decision and award, and in violation of said agreement of November 13, 1945, and earlier agreements, the IATSE, Walsh and Brewer, created its Set Erectors Local No. 468, and claimed for it the right to perform "set erection," meaning and intending to intrude upon the contract rights of said carpenters; and that thereafter, in January, 1946, defendant Motion Picture Companies wrongfully and without just cause discharged approximately 500 carpenters from their employ, and undertook to replace them, and to allocate their work to IATSE members of said Set Erectors Local No. 468, and to other persons not members of IATSE who were issued Permits to Work; and that thereafter said Motion Picture Companies have refused to employ plaintiffs, and the class for whom they sue, for the work prescribed by said contracts, decisions and awards, and have discharged approximately 1200 of them, and have engaged in their place IATSE members and permittees, under the form of Emergency Working Cards attached as Exhibit "E," containing the agreement between the IATSE and the permittee that "The undersigned will surrender this Emergency Working Card and the position held thereunder upon demand of Local 468. It is recognized that the issuance and acceptance of this Emergency Working Card does not entitle the undersigned to membership in Local 468 or to any rights against or within said Union." [XXIV, XXV, XXVI; R. 16-17, 56].

Clarification of Arbitration Award.

The complaint further alleges that taking cognizance of the controversy over the meaning of the words "erection of sets," in the Exhibit "D" decision and award, said Committee of the Executive Council reviewed its findings, and on August 16, 1946, issued its Clarification, attached as Exhibit "F," in part as follows:

> "Jurisdiction over the erection of sets on stages was awarded to the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada under the provisions set forth in Section 8 of the decision which specifically excluded trim and mill work on said sets and stages. The word erection is construed to mean assemblage of such sets on stages or locations. It is to be clearly understood that the Committee recognizes the jurisdiction over construction work on such sets as coming within the purview of the United Brotherhood of Carpenters and Joiners jurisdiction.
>
> "Sections 2 to 5, inclusive, recognized the rightful jurisdiction of the United Brotherhood of Carpenters and Joiness of America on all mill work and carpenter work in connection with studios, all work in carpenter shops, all permanent construction and all construction work on exterior sets."

and that on September 21, 1946, William Green, President of the American Federation of Labor, wrote a letter, attached as Exhibit "G," to the Los Angeles Central Labor Council relative to the December 26, 1945 award, and clarification thereof, in part as follows:

> "Be assured that we will do everything that lies within our power to bring about the acceptance of the decision made by the committee representing the Ex-

ecutive Council, and its clarification of its decision, both in spirit and in letter. All parties involved in the jurisdictional disputes agreed in advance of the decision of the committee to accept it and abide by it." [XXVII, XXVIII; R. 17-19, 57, 59].

Compliance With Arbitration Award and Clarification by Carpenters; Breach by IATSE.

The complaint further alleges that the contract of July 2, 1946, and the basic contracts which it supplements, as to rates of pay and terms and conditions of employment of plaintiffs by defendant Motion Pictures Companies, and the agreements, decisions, findings, and awards in arbitration arrived at and agreed to by all defendants herein, specifying and allocating the type, class, and nature of work to be performed and rendered respectively by plaintiffs and by members of defendant IATSE are now in full force and effect and binding on all defendants herein; and that the plaintiffs stand ready, willing, and able to perform the work awarded to them as aforesaid, and at the rates of pay, terms, and conditions of their aforesaid contract with defendants Motion Picture Companies and Producers Association [XXIX, XXX; R. 19]; but that the defendants, who are appellees herein, failed and refused, and still fail and refuse, to abide by and to perform on their parts the said contracts, decisions, findings, and awards in arbitration, and continue to follow a course of conduct and action in violation thereof [XXXI; R. 19-20].

IATSE Threats and Coercion.

The complaint further alleges that the controversy alleged herein arises from the acts and conduct of defendants IATSE, Walsh, and Brewer in claiming, demanding, and enforcing, by coercion and other devices, including the threat to close every motion picture theatre on the continent by calling out on strike all moving picture projectionists belonging to said union, their claim to the right to provide members of IATSE and non-union permittees of said union to do the work allocated to plaintiffs by the aforesaid decision and award and the clarification thereof, by historical custom and usage, and by the terms and provisions of agreements alleged hereinbefore, and the accession to said demands and the employment of members and "permittees" of IATSE to do the work of plaintiffs by defendant Motion Picture Companies [XXXII; R. 20].

Question Is of Public Interest.

The complaint further alleges that said controversy involves the construction and interpretation of the terms and provisions of the contracts, agreements, decisions, findings and awards alleged herein, and the rights, privileges, and immunities of plaintiffs thereunder and under the Constitution and laws of the United States; and that the controversy is actual and involves more than the rights of these plaintiffs and of the thousands of persons of the class for whom they sue but involves the rights of each and every party hereto; and, in addition to said individual rights, this controversy gravely and seriously involves the public interest; and that the declaratory relief sought herein is the only remedy available to plaintiffs

to maintain the Constitutional and legal right of these plaintiffs, and of their class, and all others involved directly or indirectly to work at their chosen vocations; the Constitutional and statutory right of plaintiffs to perform and of all other parties hereto to have performed that labor prescribed under the contracts, decisions, findings and awards alleged herein; the continued and uninterrupted production of motion pictures in said studios under the good faith observance of said contracts and arbitration determination; the continued and uninterrupted flow of interstate commerce in the motion picture industry under the good faith observance of said contracts and arbitration determination; and the maintenance of law and order in the City of Los Angeles and neighboring cities, in the County of Los Angeles, in the State of California, and in other states, under the observance of said contracts and arbitration determination, so as to bring an end to the state of emergency that has been declared by the public officials of the State of California and its subdivisions; and that a state of emergency exists; that this emergency is due to this controversy over rights secured by and flowing from the laws and Constitution of the United States, for which rights no relief or remedy is provided by law or equity except the order and judgment of this court as prayed; that a declaratory judgment of these rights by this court would bind all parties hereto and terminate the controversy and its attendant violence, chaos and disorder [XXXII, XXXIII, XXXIV, XXXV; R. 20-22].

The Conspiracy.

The Second Count of the complaint further alleges that the defendants, who are appellees herein, conspired each with the other, and continue so to conspire, to deprive plaintiffs of having and exercising, and to injure plaintiffs in their persons and property in the exercise of, rights, privileges, and immunities secured to plaintiffs by the Constitution and laws of the United States, in that said defendants conspired and continue to conspire each with the other to deprive plaintiffs of the right and privilege to work at their chosen vocations, to-wit: studio carpenters, and to interfere with, obstruct, impede, and hinder said plaintiffs in the free and unhampered exercise of said right and privilege; that said conspiracy has resulted and continues to result in great damages to plaintiffs in the loss of wages [II; R. 22-23]; and in furtherance of said conspiracy, on April 10, 1945, defendants Walsh and IATSE chartered a local union of IATSE, designating it Carpenters Local No. 787, for the purpose of providing strikebreakers through said charter to impede, interfere with, obstruct, hinder and defeat plaintiffs in the free exercise of the aforesaid rights and privileges, injuring plaintiffs in their persons and property and depriving plaintiffs of having and exercising their rights and privileges as citizens of the United States [III; R. 23]; and in furtherance of said conspiracy, and with the object of injuring plaintiffs in their persons and property and depriving plaintiffs of having and exercising their rights and privileges as citizens of the United States, on April

14, 1945, defendant Walsh directed a letter to members of the Carpenters Union, and other unions, attached as Exhibit "H," in part as follows:

> "First of all, I want you to know that the International Alliance has reached an agreement with the Producers Association by which the I.A.T.S.E. will supply all labor to the studios, not only in our crafts which were recognized before the strike, but also in those classifications which have been vacated by the striking unions. The I.A. assumed this responsibility only after we were certain that it was impossible to reach an honorable settlement with those persons who are conducting this strike against the I.A.T.S.E.
>
> "On Tuesday night of this week a Carpenter's Local was chartered and is now known as Local No. 787 of the I.A.T.S.E. On Thursday night, the Motion Picture Studio Painters, Local No. 788 of the I.A.T.S.E. was chartered. In addition to these Locals, there will be a local charter for Machinists, and if necessary for other crafts. We are proceeding in accordance with our agreement with the Producers to man the studios.
>
> "As the International President of the I.A.T.S.E., I assure you that having assumed this jurisdiction, we will stake the entire strength of the International Alliance on our efforts to retain it."

[IV; R. 23-24]; and in furtherance of said conspiracy, and by "agreement with the Producers Association," and "proceeding in accordance with our agreement with the Producers to man the studios," as stated in the aforesaid letter of April 14, 1945, and with the object of injuring plaintiffs in their persons and property and depriving plaintiffs of having and exercising their rights and privileges as citi-

zens of the United States, defendants Walsh, Brewer and IATSE, did from March 12, 1945, and until on or about November 1, 1945, provide strikebreakers to defendant Motion Picture Companies, and said companies did wrongfully and without cause discharge members of Carpenters Union from their employment and did employ said strikebreakers to do carpenter work in the place of members of said Carpenters Union so discharged [V; R. 24-25]; and in furtherance of said conspiracy, defendants Walsh and IATSE did on or about November 1, 1945, create and charter Set Erectors Local No. 468 of defendant IATSE, and did issue "Emergeny Working Cards" attached as Exhibit "E" and "Permits to Work" to persons not members of said union to perform carpenter services for defendant Motion Pictures Companies and said companies did discharge numerous members of Carpenters Union and did employ for said carpenter work persons so supplied to them by said Local No. 468 of defendant IATSE; that to date approximately twelve hundred of said Carpenters Union have been so discharged [VI; R. 25, 56]; and in furtherance of said conspiracy, defendant Walsh on August 31, 1946, directed a letter to defendant Producers Association, attached as Exhibit "I," in part as follows:

> "It is the contention of this International Union that this so-called 'clarification' was issued without authority and in violation of the Cincinnati Agreement to which this International Alliance, yourselves, and the other International Unions involved, were all parties. The Cincinnati Agreement in making provision for the creation of the three man committee, specifically provided that the parties thereto accept the Committee's decision as final and binding." [VII, R. 25-26, 65];

and in furtherance of said conspiracy, defendant Walsh on September 13, 1946, directed a letter to local unions of defendant IATSE, attached as Exhibit "J," in part as follows:

> "That no other organization shall be permitted, directly or indirectly, to infringe upon the jurisdiction of the I.A.T.S.E. or its Local Unions in the Hollywood Studios; and that the employment of the members thereof shall not be interfered with or adversely affected." [VIII; R. 26, 66-67.]

The Prayer.

The prayer in plaintiffs' complaint is for the following:

> "I. That plaintiffs have the right and privilege as citizens of the United States to work at their chosen vocations free from deprivation or injury by defendants and each of them, acting individually or in conspiracy with each other, or by and through their agents or officers;
>
> "II. That the Decision, Findings and Award of the Executive Committee of the American Federation of Labor of December 26, 1945, as clarified on August 16, 1946, is binding on all defendants herein;
>
> "III. That plaintiffs have the right, free from deprivation or injury by defendants, and each of them, acting individually or in conspiracy with each other, or by and through agents or officers, to perform that work specified in the American Federation of Labor Decision, Findings, and Award of December 26, 1945, as clarified by the directive of August 16, 1946;
>
> "IV. That the term 'erection of sets on stages' as used in said award does not include any 'set construction' but means 'assemblage of such sets on stages' as stated in the directive of August 16, 1946;

"V. That plaintiffs have the right to do any and all carpenter work in connection with the studios;

"VI. That the agreement of July 2, 1946, is binding on the deefndants party thereto.

"VII. That plaintiffs have the right to work for defendant Motion Picture Companies under the rates of pay, terms, and conditions of the agreement of July 2, 1946, free from deprivation or injury by defendants and each of them, acting individually or in conspiracy with each other, or by their agents or officers.

"And such further relief as the Court deems proper." [R. 26, 27.]

Appearance and Non-resistance of Judgment by United Brotherhood of Carpenters & Joiners of America.

"Comes now the United Brotherhood of Carpenters & Joiners of America, named as defendants herein and by its counsel enters its appearance herein as to both the original and amended complaints on file herein, and does not contest the granting of the prayer of plaintiffs' amended complaint.

"Dated: This 8th day of January, 1947." [R. 68.]

Appellees' Motion to Dismiss.

The Court summarized these motions to dismiss, in said memorandum opinion, as follows:

"The defendant studios and Stagehands have moved to dismiss on the grounds that: (1) this court lacks jurisdiction; (2) the court should, in the proper exercise of its discretion, decline to assume jurisdiction; and (3) the complaint fails to state a claim upon which relief can be granted." [R. 122.]

The Issue.

The Court stated the issue, in said memorandum opinion, as follows:

> "* * * we have an action in which private individuals ask this court to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other. Since this is a court of limited jurisdiction, every case brought here must fall within the terms of a provision of some statute of the United States. Plaintiffs allege (paragraph VIII):
>
> " 'Jurisdiction of this Court is vested by virtue of Section 400, Title 28, United States Code, Annotated; Section 41(1), 41(8), 41(12), and 41(14), Title 28, United States Code, Annotated; Section 729, Title 28, United States Code, Annotated; Sections 43 and 47(3), Title 8, United States Code, Annotated; Section 157, Title 29, United States Code, Annotated; and the Constitution of the United States, Amendments V and XIV.'
>
> "If the case does not fall within the terms of one or more of these statutes or amendments to the Constitution, the court must dismiss the action for want of jurisdiction." [R. 122-123.]

"Plaintiffs do not claim any violation of the right to bargain collectively under the National Labor Relations Act, 29 U. S. C. A. 157, nor the right to contract for employment, nor the right to contract collectively for employment. Plaintiffs assert that the right

to work at one's chosen vocation within the terms of a contract negotiated under federal law, the National Labor Relations Act, has been violated. The bare right to work is not a right protected by federal law." [R. 126.]

"From the mere fact that a right was established by federal law, it does not follow that all litigation growing therefrom arises under the laws of the United States." [R. 127.]

"To come within the provisions of these sections, the suit must really and substantially involve a dispute respecting the validity, construction, or effect of some law of the United States, upon the determination of which the result depends." [R. 127.]

"The only important issue in the case at bar is the interpretation of a contract. The *meaning* of this contract is not dependent on the National Labor Relations Act, whether it owes its existence to the Act or not. A decision by this court that the Carpenters or the Stagehands, as the case may be, have the right to construct stage sets would not involve consideration of the validity, construction, or effect of the Act. The decision would be based purely and simply upon contractual principles. Therefore, this suit does not arise under the Constitution or laws of the United States, and this court lacks jurisdiction." [R. 127-128.]

"I have only attempted to outline my reasons for my conclusion that this court lacks jurisdiction. In view of my conclusion, it is unnecessary to pass upon the other questions raised by the various motions.

"The above entitled action is hereby ordered dismissed for want of jurisdiction." [R. 128.]

Judgment of Dismissal, Appeal Papers.

Judgment of Dismissal was dated on February 25, and entered February 26, 1947, as follows:

> "The motion of certain defendants for the dismissal of the above entitled action for lack of jurisdiction of this court having heretofore been submitted to this court for determination, and it appearing that this court lacks jurisdiction to proceed in said action:
>
> "It is therefore ordered, adjudged and decreed that the above entitled action be and is hereby dismissed for lack of jurisdiction." [R. 129.]

The Notice of Appeal was given on May 20, 1947, as follows:

> "Notice Is Hereby Given that the plaintiffs in the above entitled action do on behalf of themselves and all others similarly situated and each of said plaintiffs does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment of Dismissal for Lack of Jurisdiction given and made in the above entitled action in favor of defendants and against plaintiffs herein and entered February 26, 1947 in Civil Order Book 41, page 85, and from the whole and every part of said Judgment." [R. 130.]

Cost bond on appeal was duly executed on June 5, 1947, and approved by the Court and filed on June 6, 1947 [R. 131-133].

Specifications of Errors Relied Upon by Appellants.

A statement of points on which appellants intend to rely on appeal, as next hereinafter set forth, was duly filed on June 10, 1947 [R. 136], as follows:

1. The Court erred in its judgment dismissing this action for lack of jurisdiction, for the reason that the Court had jurisdiction under Section 400, Title 28, United States Code, Annotated; Sections 41(1), 41(8), 41(12) and 41(14). Title 28, United States Code, Annotated; Section 729, Title 28; United States Code, Annotated; Sections 43 and 47(3), Title 8, United States Code, Annotated; Section 157, Title 29, United States Code, Annotated; and each of them; and the Constitution of the United States, Amendments V and XIV.

2. The Court erred in its judgment dismissing this action for lack of jurisdiction, for the reason that this suit is a civil nature which arises under the Constitution and laws of the United States, particularly under the Act of Congress of July 5, 1935, commonly referred to as the National Labor Relations Act, and the laws of the United States relating to interstate commerce, and was instituted pursuant to the provisions of said National Labor Relations Act, and laws of the United States relating to interstate commerce, and also under the general equity jurisdiction of the court.

Appellants will also ask consideration of the provisions of the Labor-Management Relations Act of 1947, in the event it shall have become law pending appeal.

ARGUMENT

This case, and appeal, deals with the human, property, constitutional and statutory right of the plaintiffs herein, and of each of the class for whom they sue, comprising all members of their Carpenters Union, Local 946, employed by the defendant Motion Picture Companies, to work under:

1. The collective bargaining contract negotiated and executed for them by said union, in accordance with the National Labor Relations Act, 29 U. S. C. A. 157 [*supra* 5, 8, 10; Ex. A, R. 28];

2. The contracts negotiated and executed for them by said union, in accordance with the National Labor Relations Act, with the defendant IATSE, in relation to said collective bargaining contract [*supra* 11; Ex. B and C, R. 10-11, 14, 35, 39]; and

3. The decision and award, and clarification thereof, made by the American Federation of Labor, pursuant to an arbitration agreement by said union with said IATSE, to which the defendant Motion Picture Companies, and Producers Association, were parties [*supra*, 12, 14, 16; Ex. D and G, R. 42-49].

The complaint further alleges the breach of said contracts, and arbitration award and clarification, by the appellees herein, and compliance therewith by plaintiffs, and the class for whom they sue (*supra* 15-17); the threats of the IATSE (*supra* 18); the conspiracy of the appellees herein (*supra* 20); that an actual controversy exists because thereof (*supra* 9); and that the question is of public interest (*supra* 18).

This suit for declaratory relief is based upon said actual controversy, that involves the interpretation of the terms and provisions of said contracts and arbitration awards, and clarification thereof, and the determination of the rights and obligations of each and all of the respective parties hereto thereunder. (*Supra* 23.)

Appellants, and the Class for Whom They Sue, Have a Constitutional Right to Work Under Their Lawful Collective Bargaining Contract of Employment With the Appellee Motion Picture Companies.

Nissen v. International Brotherhood of Teamsters, etc., et al., 229 Iowa 1028, 295 N. W. 858; 141 A. L. R. 598, at page 614:

> "* * * Their membership rights and their rights under this contract with their employer were valuable property rights of which they were wrongfully deprived by the acts of the defendants. Such rights are guaranteed by the Fifth Amendment of the Federal Constitution. *Cameron v. International Alliance, etc.*, 118 N. J. Eq. 11, 176 A. 692, 696, 697, 97 A. L. R. 594. 'There is no more sacred right of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more or less than the sacred right of labor.'"

Viewing the right to work in the above light, and in this respect for the dignity of labor, appellants will now respectfully submit, in appropriate order, that the Court has jurisdiction to render a declaratory judgment in this case because it arises under the Constitution and laws of the United States.

The Federal Declaratory Judgment Act Was Intended to, and Does, Provide a Remedy to Determine Rights and Obligations Under Contracts, Including Collective Bargaining Employment Contracts.

Peoples Bank v. Eccles, 64 F. Supp. 811, states the history and purpose of the Declaratory Judgment Act:

> "The question presented on this motion to dismiss the complaint is whether a justiciable controversy is involved, which may form the basis for a declaratory judgment." (p. 812.)

> "The declaratory judgment procedure has been known in England for a great many years. In 1922, after its adoption by a number of States, the National Conference of Commissioners on Uniform State Laws drafted and recommended a uniform Declaratory Judgment Act, which has been enacted by a great many of the States. The Federal Declaratory Judgment Act became law in 1934. The report of the Senate Committee on the Judiciary, which recommended the passage of the legislation (S. Rept. No. 1005, 73d Cong., 2d Sess.) contains the following illuminating statements:

> " 'The procedure has been especially useful in avoiding the necessity, now so often present, of having to act at one's peril or to act on one's own interpretation of his rights, or abandon one's rights because of a fear of incurring damages. * * * In jurisdictions having the declaratory judgment procedure, it is not necessary to bring about such social and economic waste and destruction in order to obtain a determination of one's rights. * * * Persons now often have to act at their peril, a danger which could be frequently avoided by the ability to sue for a declaratory judgment as to their rights or duties.' "

It is requested that the Court note the language of the decision that the statute should be liberally construed:

"(3) The statute should be liberally construed, in accordance with the general canon of statutory construction applicable to remedial statutes. *Reliance Life Ins. Co. v. Burgess,* 8 Cir., 112 F. 2d 234; *Mississippi Power & Light Co. v. City of Jackson,* 5 Cir., 116 F. 2d 924; *Oil Workers Inter-Union v. Texoma Nat. Gas Co.,* 5 Cir., 146 F. 2d 62.

"One of the leading cases interpreting and applying the Federal statute is *Aetna Life Insurance Co. v. Haworth,* 300 U. S. 227, 57 S. Ct. 461, 81 L. Ed. 617, 108 A. L. R. 1000, * * *"

Mississippi Power & Light Co. v. City of Jackson, et al., 116 F. 2d 924, at 925:

"The prayer was for a declaration that; '(a) Under its said contract, plaintiff has a right, * * *"

"The city filed its motion to dismiss, asserting among other grounds (1) this court has no jurisdiction of the subject matter * * *"

"The district judge without an opinion, and without otherwise stating the reasons for his action, entered an order dismissing the cause for want of jurisdiction. Plaintiff is here challenging the order as entered erroneously, because its complaint showed the requisite diversity of citizenship and jurisdictional amount, and an actual controversy within the provisions of the Federal Declaratory Judgment Act. * * *"

"(2) While the declaratory judgment act has not added to the jurisdiction of the federal courts, it

has added a greatly valuable procedure of a highly remedial nature. Extending by its terms to all cases of actual controversy 'except with respect to Federal taxes,' it should be, it has been given a liberal construction and application to give it full effect * * *"

And at 926:

"An authoritative determination as to the present status of the contract and of the rights and duties of the parties under it is essential in the interests of both city and company and of the public that both serve. For such a case, the declaratory judgment act is made to order. A large portion of appellee's brief is devoted to a discussion of the merits of the cause. Having been dismissed for want of jurisdiction, the merits of the cause are not before us. Neither, for the same reason, are we concerned with the question much discussed in the briefs of both appellant and appellee, with authorities pointing both ways, whether the declaratory judgment jurisdiction is discretionary that is, whether if the complaint makes out a case under the statute, the exercise of such jurisdiction, may in the court's discretion, be refused. The Court having dismissed the cause for 'lack of jurisdiction' because the court was of the opinion that 'it had no jurisdiction' of it, we are concerned here with questions neither of discretion nor of the merits, but only with whether there was jurisdiction and we think it plain that there was.

"No reason presents itself to us why the jurisdiction does not exist fully here. The judgment is reversed and the cause is remanded for further and not inconsistent proceedings."

Oil Workers International Union, etc., v. Texoma Natural Gas Co., 146 F. (2d) 62, at 65:

> "* * * The court below found that the controversy between the parties related to their legal rights and liabilities under their contract; that the parties had taken adverse positions with respect to their respective rights and obligations; that, therefore, a justiciable controversy existed, appropriate for judicial determination under the Declaratory Judgment Act. We agree. An employer may establish the seniority rights of an employee in dispute with other employees, as well as general rights which their contract relationship establishes, without waiting to be sued for breach or for damages or for specific performance, and thus secure an 'interpretation of the contract during its actual operation' and stabilize an 'uncertain and disputed relation.' "

It is requested that the court note the language of the decision that it is not necessary to exhaust administrative remedies before bringing a declaratory action, as follows:

> "Exhaustion of the administrative remedies granted by the War Labor Disputes Act, 50 U. S. C. A. Appendix §1501 *et seq.*, and Executive Order No. 9017, of January 12, 1942, 50 U. S. C. A. Appendix §1507, note, to employer and employee is not a prerequisite to the bringing of a court action by either party for an alleged violation by the other of a labor agreement.
>
> "The judgment appealed from is correct. It is accordingly affirmed."

Action for Declaratory Relief, Under State and Federal Acts, Is an Accepted Procedure in Controversies Arising Under Motion Picture Employment Contracts.

The Federal and California Declaratory Judgment Acts are substantially the same in terms.

28 U. S. C. A. 400 (*supra* 1);

Code of Civil Procedure of California.

"Art. 1060. (Declaratory relief.) Any person interested * * * may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an action in the superior court for a declaration of his rights and duties in the premises, including a determination of any question of construction or validity arising under such instrument or contract. He may ask for a declaration of rights or duties, either alone or with other relief; * * *"

Columbia Pictures Corp. v. DeToth, 26 Cal. (2d) 753, 756:

"Plaintiff appeals from a judgment of dismissal entered upon sustaining defendant's general and special demurrer to the complaint without leave to amend.

"In substance the pleading discloses the following: Plaintiff is seeking a declaration of the rights and duties of the parties under an unwritten contract of employment." (pp. 756-757.)

"An actual controversy between the parties is asserted. Arbitration of the dispute by the Screen

Directors Guild was sought but its Conciliation Committee could not reach the required unanimous decision and made no findings." (p. 758.)

"The prayer is for a decree fixing the rights and duties of the parties under the contract and renewal options as modified and extended, declaring it to be a valid and subsisting obligation, and granting such further relief as may be just and proper." (p. 758.)

"(12) The remedies provided by the statute are cumulative and declaratory relief may be asked alone or with other relief (Code Civ. Proc., §§1060-1062)."

"(13) Testing the present pleading by the standards set forth in the cited cases, its allegations do not necessarily show that the remedy of declaratory relief may not have been better suited to plaintiff's needs than the traditional remedies otherwise disclose. Furthermore, as stated in *Ermolieff v. R.K.O. Radio Pictures, supra* (19 Cal. 2d 543), at page 547, 'Ordinarily, the alternative remedy, such as damages, injunctive relief and the like would be more harsh, and if he chooses the milder remedy, declaratory relief, the court is not required for that reason to compel him to seek a more stringent one.'" (p. 761.)

This case is also reported in 162 A. L. R. 743. In the notes following the opinion, A. L. R. comments upon contracts with unions of employees, at page 781, as follows:

"Many declaratory judgments have been rendered with respect to the construction and effect of con-

tracts between employers and unions of employees, commonly called collective bargaining agreements, including questions of seniority."

citing, among others:

Loew's Incorporated v. Basson, et al., 46 F. Supp. 66. (App. 8): where the parties are the same as in the present case, in that Loew's Incorporated, the plaintiff there, is a defendant and appellee here, and the IATSE, parent organization of the Local Union sued as defendant there, is likewise a defendant and appellee here; in that the issue was upon the jurisdiction of the court to render a declaratory judgment, in that case pending the negotiation of a new collective bargaining contract, and here after the contract was made; in that there were controversies in the two cases over the terms of the proposed and existing contracts, respectively; in that the IATSE was demanding illegal contract provisions, that would have violated the Sherman Anti-Trust consent decree against the Motion Picture Companies, and was accompanying these demands with threats and coercion, similar to its conduct in this case; and in that the IATSE was thereby seeking to draw Loew's Incorporated, and the other companies mentioned, into an illegal conspiracy against independent companies, as well as the major companies, just as the appellees in this case have conspired against plaintiffs, the independent companies, and public interest. (*Supra,* 21, 23.)

In the *Loew's* case the court found that an actual controversy existed; that Loew's Incorporated and the other

Motion Picture Companies, generally the same as the appellees in this case, were engaged in interstate commerce; the IATSE was attempting a boycott against the independent companies; and the demands made by the IATSE would have placed the Motion Picture Companies, and the IATSE, in violation of the Sherman Act and the consent decree against the major companies. (App. 14-16.)

Headlines have been interspersed in the recital of plaintiffs' complaint in this case (*supra* 6-24), and in the quoted recitals of *Loew's Incorporated v. Basson* (app. 8-16), for convenience in turning to the particular allegations in the two cases.

The Court Has Jurisdiction in This Case Because It Arises Under the Constitution and Laws of the United States as Specified, Particularly the National Labor Relations Act, and the Labor-Management Relations Act.

Please see law specified (*supra* 1-5).

The Exhibit "A" contract between plaintiffs' Carpenters Union, Local No. 946, and the appellee Motion Picture Companies, and Association (*supra* 10), alone, and as confirmed by the Exhibit "B" contracts between plaintiffs' Carpenters Union and the IATSE (*supra* 11), and the Exhibit "C" contract between plaintiffs' Carpenters Union and the IATSE Grips, Local 80 (*supra* 13), and the Exhibit "D" arbitration award, and the Exhibit "F" clarification thereof, rendered by the Executive Council of the American Federation of Labor (*supra* 14), under an arbitration agreement to which the appellee Motion Picture Companies, and Association, were parties [Par. XIX, R. 12], were executed under the National Labor Relations Act.

29 U. S. C. A. 157 (*supra* 5):

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Collective Bargaining Contract Binding Through 1948

The Exhibit "A", Collective Bargaining Contract between the appellee Motion Picture Companies and the various craft unions, including plaintiffs' Carpenters Local No. 946, was dated July 2, 1946 [R. 28], was for a period of two years, provided for the carpenters to go back to work without discrimination against them [R. 32]:

> "*Contract for two years.* If living costs go up 5% or more between July 1st and December 31st, 1946, unions may demand renegotiation of wages only.
>
> "Bureau of Labor Statistics for local area to be the authority.
>
> "All crafts going back to work Wednesday a. m. July 3, 1946, without discrimination."

This contract is now in effect as a valid and binding collective bargaining contract under said National Labor Relations Act.

Work Contracted to Carpenters' Union

This collective bargaining contract relates to the carpenters' work established over a long period of years (*supra* 10), and is to be considered in the light of the successive contracts between the Carpenters Union and the IATSE, and of the Arbitration Award made by Executive Council of the American Federation of Labor, as follows:

The Exhibit "B" agreement between the IATSE and the Carpenters Union dated July 9, 1921, divided the work [R. 37], as follows:

> "It is agreed by the International Alliance of Theatrical Stage Employees that all work done on lots

or location and all work done in shops, either bench or machine work, comes under the jurisdiction of the United Brotherhood of Carpenters and Joiners of America.

"It is agreed that:

"All carpenter work in and around Moving Picture Studios belongs to the carpenter. This includes:

"1. Any and all carpenter work in connection with the Moving Picture Studios, the construction of stages or platforms on which buildings or parts of buildings are to be erected.

"2. All carpenter work in connection with the erection of any building or part of building, from which a picture is to be taken.

"3. The operation of all wood-working machinery in the making of all furniture, fixtures, trim, etc., for use in Motion Picture Studios, belongs to the carpenters.

"The carpenters lay no claim to what is usually termed or referred to as the property man, or those employed in placing furniture, laying carpets, hanging draperies, pictures, etc.

"It is clearly understood that insofar as Section 2 of this part of the agreement is concerned and particularly the right to the setting up striking of the scenes on the stages after the construction work has been completed, it shall be liberally and cooperatively construed so as to do no injustice to either the United Brotherhood of Carpenters and Joiners of America or the International Alliance of Theatrical Stage Employees."

The Exhibit "B" agreement between the IATSE and the Carpenters Union, dated February 5, 1925, divided the work [R. 36], as follows:

> "Fifth. Division of work, by the United Brotherhood of Carpenters and Joiners.
>
> "Section 1. All trim and mill work on sets and stages.
>
> "Section 2. All mill work and carpenter work in connection with studios.
>
> "Section 3. All work in carpenter shops.
>
> "Section 4. All permanent construction.
>
> "Section 5. All construction work on exterior sets.
>
> "Division of work, by the International Alliance Theatrical Stage Employees.
>
> "Section 6. Miniature sets.
>
> "Section 7. Property building.
>
> "Section 8. Erection of sets on stages except as provided in Section 1.
>
> "Section 9. Wrecking all sets, exterior and interior.
>
> "Section 10. Erecting platforms for lamp operators and camera men on stages."

Exhibit "C" agreement between the IATSE Grips Local 80 and the Carpenters Local 946, divided the work [R. 39], as follows:

> "That Motion Picture Studio Carpenters' Local 946 shall have jurisdiction over:
>
> "1. All temporary and permanent building construction work and the maintenance of same. This shall not cover any building done for the purpose of photographing.

"2. The installing and handling of all hardware and glass.

"3. The complete building, erection, re-erection and remodelling of all sets, streets, parts of sets and retakes, including sufficient platforms for shooting same, but not including platforms used exclusively for the camera, lighting equipment and dolly tracks. Sets used for process or trick photography shall be considered the same as any other sets.

"4. The building and manufacturing of all grip equipment which is made of wood or wood substitutes.

"5. All wood crating for shipping or storing.

"6. The operation of all woodworking machinery.

"7. The construction and remodelling of all cut-outs and the erection of same, with the exception of fold and hold cut-outs.

"8. Heavy construction on all wooden diffusing frames.

"9. The building or erection and dismantling of all scaffolds for construction, with the exception of tubular steel scaffolding.

"10. Remodelling of all sets while shooting on studios or on location.

"11. The underpinning and construction of all platforms, with the exception of those used exclusively for camera, light and dolly track platforms.

"That Motion Picture Studio Grips' Local 80 shall have jurisdiction over:

"1. The handling of all sets and units from the mill to the stage, from stage to stage, from stage to scene dock, from scene dock to mill, and from scene dock to stage.

"2. The handling and maintenance of all grip equipment.

"3. The erection and handling of all fold and hold cutouts.

"4. The construction, maintenance and handling of all diffusing frames, with the exception of heavy construction on wooden frames.

"5. The building, erection and dismantling of all tubular steel scaffolding. This is not to include underpinning.

"6. The construction of all platforms, including underpinning, for use exclusively by camera, lighting equipment and for supporting dolly tracks."

Work Allocated by Arbitration Award.

The Arbitration Award rendered by the Executive Council of the American Federation of Labor made directions [R. 42], as follows:

"Hollywood Studio Union Strike and Jurisdiction Controversy:

"1. The Council directs that the Hollywood strike be terminated immediately.

"2. That all employees return to work immediately.

"3. That for a period of thirty days the International Unions affected make every attempt to settle the jurisdictional questions involved in the dispute.

"4. That after the expiration of thirty days a committee of three members of the Executive Council of the American Federation of Labor shall investigate and determine within thirty days all jurisdictional questions still involved.

"5. That all parties concerned, the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, the United Brotherhood of Carpenters and

Joiners of America, * * * accept as final and binding such decisions and determinations as the Executive Council committee of three may finally render."

and allocated the work [R. 47], as follows:

"Division of work by the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada:

"Sec. 1. In the taking of motion pictures, the operating of all lights or lamps, and all lighting effects, and the setting up and striking same on stages or locations.

"Sec. 2. The handling and operating of all equipment pertaining to the lighting of sets, such as plugging boxes, spiders, plugs, flexible stage cable, all lamps and all electrical effects pertaining to the taking of moving pictures such as wind, rain, snow, storm and all other effects, except where wind machine is operated electrically.

"Sec. 3. The operating of all switchboards, whether they are permanent or portable, this is not to apply to generator rooms or portable generators sets, which shall be operated by members of the International Brotherhood of Electrical Workers of America.

"Sec. 4. The operation of all moving picture machines. (April 15, 1936, Amendment.) In the taking and recording of sound motion pictures, the operating of all sound equipment and all sound effects, and the setting up and striking of same on stages and locations."

and to the Carpenters [R. 54], as follows:

"Division of work by the United Brotherhood of Carpenters and Joiners of America:

"Section 1. All trim and mill work on sets and stages.

"Section 2. All mill work and carpenter work in connection with studios.

"Section 3. All work in carpenter shops.

"Section 4. All permanent construction.

"Section 5. All construction work on exterior sets.

"Division of work by the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada:

"Section 6. Miniature sets.

"Section 7. Property building.

"Section 8. Erection of sets on stages except as provided in Section 1.

"Section 9. Wrecking all sets, exterior and interior.

"Section 10. Erecting platforms for lamp operators and camera men on stages.

"This decision is applicable to the Motion Picture Industry and none other, and is not to be construed as interfering with or disrupting any jurisdiction otherwise granted the United Brotherhood of Carpenters and Joiners of America by the American Federation of Labor."

The Exhibit "F" letter to the Arbitration Committee of the American Federation of Labor, dated August 16, 1946, contained the following clarification of said award [R. 57]:

"The Committee took cognizance of the allegations contained in a report submitted to President Green

by Organizer Daniel V. Flannagan under date of August 9, 1946. According to a brief embodied therein Studio Carpenters Local 946, U. B. of C. & J. of A., alleges that certain violations have taken place whereby the carpenters jurisdiction set forth in the directive has been encroached upon.

"Jurisdiction over the erection of sets on stages was awarded to the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada under the provisions set forth in Section 8 of the decision which specifically excluded trim and mill work on said sets and stages. The word erection is construed to mean assemblage of such sets on stages or locations. It is to be clearly understood that the Committee recognizes the jurisdiction over construction work on such sets as coming within the purview of the United Brotherhood of Carpenters and Joiners jurisdiction.

"Section 2 to 5 inclusive recognized the rightful jurisdiction of the United Brotherhood of Carpenters and Joiners of America on all mill work and carpenter work in connection with studios, all work in carpenter shops, all permanent construction and all construction work on exterior sets.

"In view of the alleged violations, the Committee hereby direct that all participants in the Hollywood Motion Picture Studio dispute strictly adhere to the provisions of the directive handed down on December 26, 1945."

Controversy Over Work Easy of Solution by Declaratory Judgment.

With the work allocated in said successive contracts, and by said A. F. of L. award and clarification, and with no justifiable reason for the attempt of appellees to deprive the Carpenters of the work specified in said contracts and award, it is submitted that this is peculiarly a case calling for declaratory relief.

Collective Bargaining Federal Rights Inure to Individual Union Members.

Said collective bargaining contracts inured to the benefit of plaintiffs, and the class for whom they sue, and each of them, as their individual federal rights.

J. I. Case Co. v. National Labor Relations Board, 321 U. S. 332, 64 S. Ct. 576, 88 L. Ed. 762 at 766:

> "* * * an employee becomes entitled by virtue of the Labor Relations Act somewhat as a third party beneficiary to all benefits of the collective trade agreement. * * *"

These rights are guaranteed by the V and XIV Amendments to the Constitution (*supra* 5):

Constitution, Amendment V:

> "No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *"

Constitution, Amendment XIV:

> "Section 1. * * * nor shall any state deprive any person of life, liberty, or property, without due process of law; * * *"

Steele v. Louisville & Nashville R. R. Co., 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173, at 182:

"* * * As we have pointed out with respect to the like provision of the National Labor Relations Act in J. I. Case Co. v. National Labor Relations Bd. *supra* (321 U. S. 338, 88 L. Ed. 768, 64 S. Ct. 576) 'The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group. Its benefits and advantages are open to every employee of the represented unit.' The purpose of providing for a representative is to secure those benefits for those who are represented and not to deprive them or any of them of the benefits of collective bargaining for the advantage of the representative or those members of the craft who selected it."

Question Not a "Jurisdiction Dispute."

And at page 184:

"Since the right asserted by petitioner 'is . . . claimed under the Constitution' and a 'statute of the United States,' the decision of the Alabama court, adverse to that contention is reviewable here under § 237 (b) of the Judicial Code, 28 USCA § 344, 8 FCA title 28, § 344, unless the Railway Labor Act itself has excluded petitioner's claims from judicial consideration. The question here presented is not one of a jurisdictional dispute, determinable under the administrative scheme set up by the Act, * * *"

Court Has Jurisdiction.

And at page 186:

"In the absence of any available administrative remedy, the right here asserted, to a remedy for breach of the statutory duty of the bargaining representative to represent and act for the members of a craft, is of judicial cognizance. The right would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such a duty or obligation and which it is their duty to give in cases in which they have jurisdiction. * * * As we noted in General Committee of Adjustment, B. L. E. v. Missouri-Kansas Texas R. Co. *supra* (320 U. S. 331, 88 L. Ed. 81, 64 S. Ct. 146), the statutory provisions which are in issue are stated in the form of commands. For the present command there is no mode of enforcement other than resort to the courts, whose jurisdiction and duty to afford a remedy for a breach of statutory duty are left unaffected. The right is analogous to the statutory right of employees to require the employer to bargain with the statutory representative of a craft, a right which this Court has enforced and protected by its injunction in Texas & N. O. R. Co., Brotherhood of R. & S. S. Clerks, *supra* (221 U. S. 556, 557, 560, 74 L. Ed. 1039, 1041, 50 S. Ct. 427), and in Virginia R. Co. v. System Federation, R. E. D. *supra* (300 U. S. 548, 81 L. Ed. 799, 57 S. Ct. 592), and like it is one for which there is no available administrative remedy."

The Court Has Jurisdiction Because the Conspiracy of the Appellees Herein, for the Appellee Motion Picture Companies, and Association, to Employ Non-Union Permittees, Designated by IATSE, in a Quasi Open Shop Operation, and in Substitution for Carpenters Under Their Collective Bargaining Contract, Constitutes an Attack Upon, and an Attempt to Nullify, the National Labor Relations Act.

The statement made under the preceding proposition is here respectfully adopted.

The Exhibit "E", "Emergency Working Card", of the Division of Set Erection, IATSE Local 468, issued to E. Snow, on November 18, 1946, "under conditions set forth on back of this card", as said exhibit, is set forth in the Record at page 56, is as follows:

> "This card issued for work under the Jurisdiction of Local 468 of the I. A. T. S. E. and M. P. M. O. of U. S. and Canada. The undersigned in accepting this Emergency Working Card authorizes, designates and chooses the said Labor Organization to negotiate, bargain collectively, present and discuss grievances with the above employer as his representative and sole, exclusive collective bargaining agency in all respects. The undersigned agrees to abide by the Constitution and By-Laws, decisions, rules, regulations, and working conditions of Local 468 of the I. A. T. S. E. and M. P. M. O. of U. S. and Canada. *The undersigned will surrender this Emergency Working Card and the position held thereunder upon demand of Local 468. It is recognized that the issuance and acceptance of this Emergency Working Card does not entitle the undersigned to membership in Local 468 or to any rights against or within said Union.* (Italics ours.)
>
> "Agreed to Elzyn Snow"

It is respectfully submitted that the public interest, at this critical time in our country's history, requires a clear-cut, judicial determination that no industry is big enough, that no labor organization is strong enough, and that no combination is powerful enough, to nullify the laws of the United States.

Andrew Jackson put an end to nullification.

American Federation of Labor, et al. v. J. Tom Watson, et al. 327 U. S. 582, 66 S. Ct. 761, 90 L. Ed. 873 at 878:

> "* * * We do not pass on the question whether the District Court had jurisdiction under § 24 (1) or § 24 (14) of the Judicial Code. For it is the view of a majority of the Court that jurisdiction is found in § 24 (8) of the Judicial Code, 28 USCA § 41 (8), 7 FCA title 28, § 41 (8) which grants the federal district courts jurisdiction of all 'suits and proceedings arising under any law regulating commerce.' As we have said, the bill alleges a conflict between the Florida law and the National Labor Relations Act. The theory of the bill is that labor unions, certified as collective bargaining representatives of employees under that Act, are granted as a matter of federal law the right to use the closed-shop agreement or, alternatively, that the right of collective bargaining granted by that Act includes the right to bargain collectively for a closed shop. Whether that claim is correct is a question which goes to the merits. It is, however, a substantial one. And since the right asserted is derived from or recognized by a federal law regulating commerce, a majority of the Court conclude that a suit to protect it against impairment by state action is a suit 'arising under' a federal law 'regulating commerce.' "

The Court Has Jurisdiction in This Case Because It Arises Under the Constitution and Laws of the United States as Specified, Particularly the Civil Rights Act.

Please see laws specified (*supra* 1-5), particularly:

28 U. S. C. A. 41 (12) and (14) (*supra* 2);

28 U. S. C. A. 729 (*supra* 3);

8 U. S. C. A. 43 and 47 (3) (*supra* 4).

It has been shown in the beginning of this argument that the plaintiffs, and the class for whom they sue, have a human and property right, a constitutional and statutory right, to work under their lawful contract of employment (*supra* 29-30). It has been shown in argument that this right, employment under collective bargaining contract, enures to the individual (*supra* 48). It is now submitted that this is a civil right. The deprivation of this civil right, by conspiracy and action of appellees is so closely related to the deprivation of their right to work under the collective bargaining contract, that the facts set forth in those sections of argument are here respectfully adopted to avoid repetition (*supra* 39, 51).

Nissen v. International Brotherhood of Teamsters, et al. (*supra* 30);

Steele v. Louisville & Nashville R. R. Co. (*supra* 49);

American Federation of Labor v. Tom Watson (*supra* 52).

Picking v. Pennsylvania R. Co., 151 F. (2d) 240, at 244:

"It is appropriate, therefore, to refer to the decisions of the Supreme Court in Polk Co. v. Glover,

305 U. S. 5, 59 S. Ct. 15, 83 L. Ed. 6; and Borden's Farm Products Co. v. Baldwin, 293 U. S. 194, 55 S. Ct. 187, 79 L. Ed. 281. In the latter case it was said by Mr. Justice Stone and Mr. Justice Cardozo in the concurring opinion, id. 293 U. S. at page 213, 55 S. Ct. at page 193, 79 L. Ed. 281, 'We are in accord with the view that it is inexpedient to determine grave constitutional questions upon a demurrer to a complaint, or upon an equivalent motion, if there is a reasonable likelihood that the production of evidence will make the answer to the question clearer.' "

And at 249:

"The provisions of R. S. § 1979 are sufficiently clear to meet the tests required by the Due Process Clause of the Fifth Amendment. No question as to the sufficiency of the statute to grant a right of civil action should now be heard."

* * * * * * * *

"The corporate defendant, The Pennsylvania Railroad Company, however, is not an agency of any state. It is a privately owned railroad corporation. It has moved to dismiss the complaint upon the ground inter alia, that 'There is nothing in the allegations of the Complaint that the Pennsylvania Railroad Company did other than transport as a common carrier the complainants while in the custody of officers of the law.' But if, as the plaintiffs assert this defendant 'materially and physically participated in' all the alleged unlawful acts of September 15, 1941, it may have joined in, or as the plaintiffs put it, 'adopted' the consipracy as its own. * * * The Pennsylvania Railroad Company has not made use of any of the methods available to compel the plaintiffs to bring their case out in the open. In the absence of such action by the Railroad Company we

may not conclude that the plaintiffs have not stated a valid cause of action under the Civil Rights Act against it."

Bartling v. C. I. O., 40 Fed. Supp. 366:

"This is an action brought by two Ford employees who allege that as a result of the wrongful acts and conspiracy of defendants, the Communist Party of the United States and the Congress of International Organizations, each voluntary associations, they, suffered bodily injury and, are now continually threatened with being deprived of their right to work. * * * Each defendant, through respective counsel, insists that this court has no jurisdiction to try and hear the issues involved since many of the individual members of each defendant are residents, inhabitants, and citizens of the State of Michigan, as are plaintiffs."

And at 369:

"We find that the question of jurisdiction raised in this case is covered entirely, either directly or by reasonable deduction, by the case of United Mine Workers of America et al. v. Coronado Coal Company et al., 259 U. S. 344, 42 S. Ct. 570, 66 L. Ed. 975, 27 A. L. R. 762. In truth the Coronado facts seem to be on all fours with the matter at bar. Up to the time of the Coronado decision, there seemed to be no holding or law, other than those passed in some individual states, permitting action against an unincorporated union as such. But the Supreme Court in the above case in an opinion by Chief Justice Taft settled the question by holding (1924) in effect that the development of labor unions and centralization of power and property in one central body with the right to absolutely control, crown, or decapitate

even the individual organizers and officers of local unions was of such a corporate nature that public policy demanded that having acquired protection and benefits under the laws of the United States they should also be required under some circumstances to respond in federal courts. Defendants do not deny right of plaintiffs to sue each of them in the proper tribunal, which they say is either the state court or if in the federal court, then at their official residence whenever a federal question is involved, such as to-wit: the right to work."

And at 369:

"We deny the motion herein discussed * * *. We believe that in general the bill of complaint is sufficient."

It is also submitted that cases under the Fourteenth Amendment to the Constitution, relating to violation of civil rights of public authorities, are applicable in principle to the violation of civil rights of private persons.

Douglas v. City of Jeannette, 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324 at 1327:

"We think it plain that the district court had jurisdiction as a federal court to hear and decide the question of the constitutional validity of the ordinance, although there was no allegation or proof that the matter in controversy exceeded $3,000. By 8 USCA § 43, 2 FCA Title 8, §43 (derived from §1 of the Civil Rights Act of April 20, 1871, 17 Stat. 13, c. 22, continued without substantial change as Rev. Stat. §1979) it is provided that 'every per-

son who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the depriviation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.'

"As we held in Hague v. Committee for Industrial Organization, 307 U. S. 496, 507-514, 527-532, 83 L. ed. 1423, 1432-1436, 1443-1446, 59 S. Ct. 954, the district courts of the United States are given jurisdiction by 28 USCA § 41 (14), 7 FCA Title 28, §41 (14) over suits brought under the Civil Rights Act without the allegation or proof of any jurisdictional amount. Not only do petitioners allege that the present suit was brought under the Civil Rights Act, but their allegations plainly set out an infringement of the provisions. In substance, the complaint alleges that respondents, proceeding under the challenged ordinance, by arrest, detention and by criminal prosecutions of petitioners and other Jehovah's Witnesses, had subjected them to deprivation of their rights of freedom of speech, press and religion secured by the Constitution, and the complaint seeks equitable relief from such deprivation in the future."

The Court Has Jurisdiction in This Case Because It Arises Under the Constitution and Laws of the United States as Specified, Particularly the Sherman Anti-Trust Act.

Please see laws specified (*supra* 1-5).

Excerpts from the decision of the United States District Court for the Southern District of New York in the case of *Loew's Incorporated, et al. v. Basson, et al.*, 46 F. Supp. 66, are set forth in the appendix hereto. They give a copious statement of the allegations in the complaint of Loew's Incorporated. It is requested that the court take judicial cognizance of the following admissions in said allegations:

1. The parties: That the plaintiff there, and the major motion picture companies mentioned by it, are defendants here; and that the defendant union there is a local of IATSE, a defendant here [App. 8];

2. That Loew's Incorporated, and its associated major motion picture companies, appellees here, have violated the Sherman Anti-Trust Act, and are operating under a consent decree [App. 10];

3. That while Loew's Incorporated was negotiating with the IATSE local for a new collective bargaining contract, said IATSE local demanded that the new contract include provisions which Loew's Incorporated alleged to be illegal and in violation of said consent decree [App. 11];

4. That in pressing said demands said IATSE local made threats against Loew's Incorporated and other companies [App. 13].

The court is also requested to take cognizance of the fact that Loew's Incorporated prayed for a declaratory judgment in said action to decree that the inclusion of the demands made by IATSE local would be in violation of the consent decree, and that if all distributors should comply with the IATSE demands a conspiracy would result that would constitute a violation of the Sherman Anti-Trust Act App. 13].

It is requested that the court take cognizance of the findings of the court there:

(1) That a real controversy existed [App. 14];

(2) That Loew's Incorporated was engaged in interstate commerce [App. 14];

(3) That IATSE local was attempting to compel Loew's Incorporated to force independent exhibitors licensed by it to employ only members of said IATSE local in its projection room, and that this would constitute a reverse secondary boycott [App. 15]; and

(4) That the contract as demanded by the IATSE local would constitute a violation of the Sherman Anti-Trust Act [App. 15].

It is also requested that the court take cognizance of the decision of the court there denying the motion of the IATSE local to dismiss the said suit of Loew's Incorporated for want of jurisdiction [App. 16].

Reference is made to the statement of the allegations made by plaintiffs in the pending case (*supra* 16-24). Upon comparison of the allegations in the two complaints

it is submitted that the court has jurisdiction here upon the same principle as jurisdiction was taken there.

Allen Bradley Company, et al. v. Local Union No. 3, International Brotherhood of Electrical Workers, et al., 325 U. S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939 at 1942:

> "The question presented is whether it is a violation of the Sherman Anti-Trust Act for labor unions and their members, prompted by a desire to get and hold jobs for themselves at good wages and under high working standards, to combine with employers and with manufacturers of goods to restrain competition in, and to monopolize the marketing of, such goods."

At 1943:

> "Agencies were set up composed of representatives of all three groups to boycott recalcitrant local contractors and manufacturers and to bar from the area equipment manufactured outside its boundaries. The combination among the three groups, union, contractors, and manufacturers, became highly successful from the standpoint of all of them. The business of New York City manufacturers had a phenomenal growth, thereby multiplying the jobs available for the Local's members. Wages went up, hours were shortened, and the New York electrical equipment prices soared, to the decided financial profit of local contractors and manufacturers. The success is illustrated by the fact that some New York manufacturers sold their goods in the protected city market at one price and sold identical goods outside of New York at a far lower price. All of this took place, as the Circuit Court of Appeals declared, 'through the stifling of competition,' and because the three groups, in combination as 'copartners,' achieved

'a complete monopoly which they used to boycott the equipment manufactured by the plaintiffs.' Interstate sale of various types of electrical equipment has, by this powerful combination, been wholly suppressed.

"Quite obviously, this combination of business men has violated both §§(1) and (2) of the Sherman Act, unless its conduct is immunized by the participation of the union. For it intended to and did restrain trade in and monopolize the supply of electrical equipment in the New York City area to the exclusion of equipment manufactured in and shipped from other states, and did also control its price and discriminate between its would-be customers. Apex Hosiery Co. v. Leader, 310 U. S. 469, 512, 513, 84 L. ed. 1311, 1333, 1334, 60 S. Ct. 982, 128 ALR 1044. Our problem in this case is therefore a very narrow one—do labor unions violate the Sherman Act when, in order to further their own interests as wage earners, they aid and abet business men to do the precise things which that Act prohibits?

"The Sherman Act as originally passed contained no language expressly exempting any labor union activities."

And at 1948:

"* * * Finding no purpose of Congress to immunize labor unions who aid and abet manufacturers and traders in violating the Sherman Act, we hold that the district court correctly concluded that the respondents had violated the Act.

"Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups. * * *"

And at 1949:

"This brings us to a consideration of the scope of the declaratory judgment and the injunction granted by the district court. We cannot sustain the judgment or the injunction in the form in which they were entered. The judgment and the injunction apply only to the union, its members, and its agents, since they were the only parties against whom relief was asked. The judgment declared that 'the combination and conspiracy and the acts done and being done in furtherance thereof all as set forth in the findings of fact herein are unlawful and contrary to the . . . Sherman Anti-Trust Law, as amended and supplemented.'

And at 1950:

"Respondents objected to the form of the injunction and specifically requested that it be amended so as to enjoin only those prohibited activities in which the union engaged in combination 'with any person, firm or corporation which is a non-labor group . . .' Without such a limitation, the injunction as issued runs directly counter to the Clayton and the Norris-La Guardia Acts. The district court's refusal so to limit it was error.

"The judgment of the Circuit Court of Appeals ordering the action dismissed is accordingly reversed and the cause is remanded to the district court for modification and clarification of the judgment and injunction, consistent with this opinion."

Following the Dismissal of This Suit for Want of Jurisdiction, on the Ground That There Was No Diversity of Citizenship, and Pending This Appeal, Congress Enacted the Labor-Management Relations Act of 1947, and in It Provided Unquestioned Jurisdiction in This and Like Cases.

This intention of Congress is shown by the discussion in the House debate on H. R. 3020, Congressional Record, April 17, 1947, page 3734:

"The Chairman: The gentleman from North Carolina is recognized for 5 minutes.

Mr. Barden: Mr. Chairman, I take this time for the purpose of asking the Chairman a question, and in asking the question I want it understood that it is intended to make a part of the record that may hereafter be referred to as history of the legislation.

It is my understanding that section 302, the section dealing with equal responsibility under collective bargaining contracts in strike actions and proceedings in district courts contemplates not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances; in other words, proceedings could, for example, be brought by the employers, the labor organizations, or interested individual employees under the Declaratory Judgments Act in order to secure declarations from the Court of legal rights under the contract.

Mr. Hartley: The interpretation the gentleman has just given of that section is absolutely correct.

Mr. Case of South Dakota: Mr. Chairman, will the gentleman yield?

Mr. Barden: I yield.

Mr. Case of South Dakota: Would the gentleman and the Chairman agree that that also includes declaratory judgments in the case of jurisdictional disputes?

Mr. Barden: I would so understand it.

Mr. Case of South Dakota: I would like to have that in the record also because declaratory judgments is a proceeding which has been adopted in the case of jurisdictional disputes.

Mr. Barden: I think the language is clear, but I want to make it certain.

Mr. Case of South Dakota: That is involved, and I refer to declaratory judgments. It is involved in the case of the motion picture players of California and I think we can strengthen the hands of those who are trying to get that matter straightened out.

Mr. Barden: It will minimize lawsuits and cut down the length of these controversies. That is the purpose of it."

The Labor-Management Relations Act of 1947, known as the Taft-Hartley Bill, as enacted on June 23, 1947, contains the following sections giving or confirming, this jurisdiction:

"Sec. 301 (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

"Sec. 303 (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

"(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

"(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

"(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. * * *"

"(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

This provision of the new law is supported by the following precedent:

Federal Deposit Ins. Corporation v. George-Howard, 153 F. (2d) 591, at page 593, states:

"The Federal Deposit Insurance Corporation brought suit in the District Court (a) for a determination of its right to interest, during the liquidation of a Missouri state bank, on the deposits which it had insured and paid under 12 U. S. C. A. §264, 49 Stat. 684, and for which it had taken assignments and subrogation from the depositors; and (b) for an order directing payment to it of a fund, in the amount of such interest, which had been placed in escrow by the sole stockholder of the bank under an agreement with the Corporation, made after all other claims of creditors had been satisfied * * *"

"The District Court dismissed the action, 55 F. Supp. 921, after trial, on the grounds (1) that the controversy was not one arising under the laws of the United States, within the meaning of section 24(1)(a) of the Judicial Code, 28 U. S. C. A. §41(1)(a), as a basis for federal jurisdiction; and

(2) that, even if jurisdiction had thus existed, a federal court ought not to exercise it in the situation for comity reasons, but should leave the controversy to be presented to the state circuit court which had supervised the liquidation. The Corporation has appealed.

"We think the District Court was in error in each of these holdings.

"(1) As to the first holding, the statute creating the Federal Deposit Insurance Corporation, after giving the Corporation power generally to 'sue and be sued, complain and defend, in any court of law or equity, State or Federal,' further expressly provides, 12 U. S. C. A. §264(j), Fourth, 49 Stat. 692, that 'All suits of a civil nature at common law or in equity to which the Corporation (in its own capacity) shall be a party shall be deemed to arise under the laws of the United States.' This special provision reasonably can only mean that all such suits to which the Corporation is a party in its own capacity must legally be regarded as arising under the laws of the United States, within the jurisdiction granted to the federal District Courts by section 24(1)(a) of the Judicial Code, 28 U. S. C. A. §41(1)(a)."

Certiorari was denied by the Supreme Court on October 14, 1946. 91 L. Ed. Adv. 39.

Conclusion.

The immediate issue here is whether the United States District Court has jurisdiction in this suit, for declaratory relief, arising under the Constitution and laws of the United States.

It has been shown that appellants, and the class for whom they sue, carpenters, have a sacred, constitutional and statutory, human and property, right to work under their lawful collective bargaining contract with the appellee Motion Picture Companies (*supra* 29-30);

It has been shown that the Federal Declaratory Judgment Act was intended to, and does, provide a remedy to determine rights and obligations under collective bargaining contracts, including the determination of controversies arising under motion picture contracts, and that the Act should be construed liberally (*supra* 31);

It has been shown that the court has jurisdiction:

1. Because this case to declare the rights and obligations of all parties concerned under the Exhibit "A" collective bargaining contract between Carpenters Union and appellee Motion Picture Companies, and Association, and the related Exhibits "B" and "C" contracts between the Carpenters Union and IATSE, and the Exhibit "D" A. F. of L. Arbitration Decision and Award thereon, to which appellee Motion Picture Companies were a party, arises under the Constitution and laws of the United States, particularly the National Labor Relations Act (*supra* 39);

2. Because the case arises under said Act, by reason of the conspiracy of the appellee Motion Picture Companies, and Association, and IATSE, to nullify the Na-

tional Labor Relations Act, and collective bargaining contract made thereunder, by substituting their arbitrary quasi open-shop operation in which the companies employ non-union permittees, designated by the IATSE, in substitution for union carpenters under said collective bargaining contract (*supra* 51);

3. Because the case arises under the Civil Rights Act (*supra* 53); and

4. Because the case arises under the Sherman Anti-Trust Act (*supra* 58).

The jurisdiction of the court has been confirmed, and placed beyond question, by the provisions of the Labor-Management Relations Act of 1947.

The underlying issue in this case is whether the management in any company, or companies, in any industry, is big enough, or the control in any labor organization, or organizations, is strong enough, or the combination of them in conspiracy is powerful enough, to contemptuously set aside the laws of Congress, and substitute their arbitrary will for the lawful functions of the Government of the United States (*supra* 52).

This is no ordinary case. It deals with the need for law and order in the human and legal relationship of management and labor, with respect for government, and with the present need for stability in national economy. In these needs it offers the practical remedy of declaratory judgments for the settlement of controversies over rights and obligations under collective bargaining contracts, not for burdensome use in every controversy that arises, but to bring an end to those arbitrary and unnecessary controversies that should never exist by making this speedy remedy available.

Appreciation is respectfully expressed to these individual carpenters, arbitrarily deprived of their right to work, for their courage in bearing the burden of this case, in the hope that the Departments and Agencies of government may accept the responsibility of utilizing the documentary evidence presented here. Gratification is also respectfully expressed that the United Brotherhood of Carpenters and Joiners of America, their own union, made a defendant here so as to bring all parties before the court, entered its appearance with the statement that it "does not contest the granting of the prayer of plaintiffs' amended complaint" [R. 68, *supra* 24].

Wherefore, appellants respectfully pray that hearing be advanced in the public interest, that the judgment of the lower court be reversed, and that the case be remanded for trial.

Respectfully submitted,

Zach Lamar Cobb,

Attorney for Appellants.

APPENDIX.

Memorandum Opinion.

This action for a declaratory judgment is brought by sixteen individuals, members of the United Brotherhood of Carpenters and Joiners of America (hereinafter called Carpenters), on behalf of themselves and others similarly situated, to determine and to protect against alleged conspiracy their rights under certain agreements entered into between the motion picture studios, Carpenters, the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada (hereinafter called Stagehands), and others. The defendant studios and Stagehands have moved to dismiss on the grounds that: (1) this court lacks jurisdiction; (2) the court should, in the proper exercise of its discretion, decline to assume jurisdiction; and (3) the complaint fails to state a claim upon which relief can be granted. [101]

The forty-eight page complaint when analyzed presents nothing more or less than a request that this court interpret a private contract or agreement allocating certain work on stage sets in the moving picture industry. As state by counsel in oral argument, the difference between the parties is simply who is "to drive the nails." The serious question before the court is whether this court has jurisdiction in the absence of diversity of citizenship.

Thus, we have an action in which private individuals ask this court to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by

other persons acting individually or in conspiracy with each other. Since this is a court of limited jurisdiction, every case brought here must fall within the terms of a provision of some statute of the United States. Plaintiffs allege (paragraph VIII):

> "Jurisdiction of this Court is vested by virtue of Section 400, Title 28, United States Code Annotated; Section 41(1), 41(8), 41(12), and 41(14), Title 28, United States Code Annotated; Section 729, Title 28, United States Code Annotated; Sections 43 and 47(3), Title 8, United States Code Annotated; Section 157, Title 29, United States Code Annotated; and the Constitution of the United States, Amendments V and XIV."

If the case does not fall within the terms of one or more of these statutes or amendments to the Constitution, the court must dismiss the action for want of jurisdiction.

28 United States Code Annotated 41(12) and 8 United States Code Annotated 47(3) give the District Courts jurisdiction in suits for damages on account of injury to the plaintiff's person or property, or the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of a conspiracy. Under 28 United States Code Annotated 41(12), damages are an essential part of the judgment, and damages will vary from person to person. Their rights are several, and a judgment in this action will not bind the parties not before the court. Pentland v. Dravo Corp., 3 Cir., 152 F. (2d) 851; [102] Bethlehem Shipbuilding Corp. v. Nylander, 14 Fed. Supp. 201. The decision here would not settle the entire controversy, and where that cannot be done, a complaint seeking a declaratory judgment should

be dismissed. Angell v. Schram, 6 Cir., 109 F. (2d) 380, 382; United Electrical R. & M. W. v. Westinghouse Electric Corp., 65 Fed. Supp. 420, 423; Koon v. Bottolfsen, 60 Fed. Supp. 316.

Disregarding the limitations of said section on account of the requirement of damages, this court would still be without jurisdiction, since these statutes were passed to protect individuals from violations of their rights by State action, and none is here alleged. Love v. Chandler, 8 Cir., 124 F. (2d) 785, 786-7. Only rights of citizens under the laws of the United States are protected. Mitchell v. Greenough, 9 Cir., 100 F. (2d) 184, cert. denied 306 U. S. 659, 83 L. Ed. 1056, 59 S. Ct. 788. That being true, since more than Three Thousand Dollars is admittedly involved, this section can in no event confer any jurisdiction not already given by 28 U. S. C. A. 41(1), which is hereinafter discussed.

28 U. S. C. A. 41(1) and 8 U. S. C. A. 43 both provide for redress for deprivation of rights under color of any law, statute, ordinance, regulation, custom, or usage of any State or Territory, in express terms. It is not alleged that the defendants are acting under color of any State law, etc. so these sections cannot act to establish jurisdiction in this court. Allen v. Corsane, 56 Fed. Supp. 169; California Oil & Gas Co. v. Miller, 96 Fed. 12, 22; Picking v. Pennsylvania R. R., 151 F. (2d) 240, is not applicable here, because the wrongs alleged in that case were all under color of State law.

28 U. S. C. A. 729 merely establishes the procedure to be followed by the federal courts in certain classes of cases. This section has reference not to the extent or scope of jurisdiction, nor to the rules of decision, but to

the forms of procedures and remedy. In re Stupp, 23 Fed. Cas. No. 13,563; United States v. Reid, 12 How. 361, 365, 53 U. S. 361, 365, 13 L. Ed. 1023; 1025; Scaffidi v. United States, [103] 1 Circ., 37 F. (2d) 203, 207.

The Fifth and Fourteen Amendments of the Constitution are designed to protect the individual from invasion of his rights, privileges and immunities by the federal and the State governments respectively. Corrigan v. Buckley, 271 U. S. 323, 330, 70 L. Ed. 969, 46 S. Ct. 521; Civil Rights Cases, 109 U. S. 3, 27 L. Ed. 969, 46 S. Ct. 521; neither Hague v. C. I. O., 307 U. S. 496, 83 L. Ed. 1385, 59 S. Ct. 972, 122 A. L. R. 695, nor Screws v. United States, 325 U. S. 91, 89 L. Ed. 1495, 65 S. Ct. 1031, 162 A. L. R. 1330, has overruled these cases, even by implication, for the wrongs complained of in both the Hague and the Screws cases were committed by the government or under color of law.

28 U. S. C. A. 41(8) confers jurisdiction on the District Courts of the United States in "all suits and proceedings arising under any law regulating commerce," without regard to the jurisdictional amount requirement of 28 U. S. C. A. 41(1). Since more than Three Thousand Dollars is involved in this action, Section 41(8) will not establish jurisdiction in this court if it cannot be established under Section 41(1), which grants jurisdiction in all suits where the matter in controversy exceeds Three Thousand Dollars and "arises under the Constitution or laws of the United States."

It is not enough that the dispute should merely affect commerce to bring it within the scope of Section 41(8) or Section 41(1). Delaware, Lackawanna & Western R. R. v. Slocum, 56 Fed. Supp. 634.

In Gully v. First National Bank, 299 U. S. 109, 81 L. Ed. 70, 57 S. Ct. 96, Mr. Justice Cardozo said, at page 112:

> "To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. * * * The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another." [104]

Plaintiffs do not claim any violation of the right to bargain collectively under the National Labor Relations Act, 29 U. S. C. A. 157, nor the right to contract for employment, nor the right to contract collectively for employment. Plaintiffs assert that the right to work at one's chosen vocation within the terms of a contract negotiated under federal law, the National Labor Relations Act, has been violated. The bare right to work is not a right protected by federal law. Love v. United States, 8 Cir., 108 F. (2d) 43, cert. denied 309 U. S. 673, 84 L. Ed. 1018, 60 S. Ct. 716, and cases therein cited; Brents v. Stone, 60 Fed. Supp. 80, 84; Emmons v. Smitt, 58 Fed. Supp. 869, affirmed 6 Cir., 149 F. (2d) 869, 872.

From the mere fact that a right was established by federal law, it does not follow that all litigation growing therefrom arises under the laws of the United States. Actions growing from the issue of federal land grants do not arise "under the laws of the United States." Shoshone Mining Co. v. Rutter, 177 U. S. 505, 44 L. Ed. 864, 20 S. Ct. 726; Shulthis v. McDougal, 225 U. S. 561, 569, 56 L. Ed. 1205, 32 S. Ct. 704, 707; Marshall

v. Desert Properties, 9 Cir., 103 F. (2d) 551, cert. denied 308 U. S. 563, 84 L. Ed. 473, 60 S. Ct. 74. An action brought to enforce a right under a contract which is made as the result of rights granted under the patent laws to receive royalties upon sale or license of the patented device is not an action arising under the laws of the United States. Odell v. Farnsworth, 250 U. S. 501, 504, 63 L. Ed. 1111, 39 S. Ct. 516. To come within the provisions of these sections, the suit must really and substantially involve a dispute respecting the validity, construction, or effect of some law of the United States, upon the determination of which the result depends Malone v. Gardner, 4 Cir., 62 F. (2d) 15; Delaware, Lackawanna & Western R. R. v. Slocum, 56 Fed. Supp. 634.

The only important issue in the case at bar is the interpretation of a contract. The meaning of this contract is not dependent on the National Labor Relations Act, whether it owes its existence to [105] that Act or not. A decision by this court that the Carpenters or the Stagehands, as the case may be, have the right to construct stage sets would not involve consideration of the validity, construction, or effect of the Act. The decision would be based purely and simply upon contractual principles. Therefore, this suit does not arise under the Constitution or laws of the United States, and this court lacks jurisdiction.

In this memorandum opinion, this court has not attempted to cover the broad field of law cited in over two hundred and twenty-five cases referred to in the two hundred pages of briefs. To do so would require the writing of a treatise on various phases of the subjects of juris-

diction of the United States District Courts in labor disputes.

I have only attempted to outline my reasons for my conclusion that this court lacks jurisdiction. In view of my conclusion, it is unnecessary to pass upon the other questions raised by the various motions.

The above entitled action is hereby ordered dismissed for want of jurisdiction.

Dated: This 25 day of Feby., 1947.

BEN HARRISON,

Judge.

Excerpts From
Loew's Incorporated v. Basson et al., 46 F. Supp. 66.

The following is being printed in the appendix, first, because of its length, and second, because of the necessity of referring to it repeatedly.

The Parties.

"The complaint alleges that plaintiff produces and manufactures motion pictures in California and sends them, in interstate commerce, all over the United States to branch offices called 'exchanges' where exhibitors see them and apply for licenses which become binding contracts, known as license agreements, upon acceptance thereof by plaintiff. At these exchanges plaintiff maintains a staff of inspectors of film, repair men, and others who see to it that the positive prints of the films are sent to the various exhibitors, and who examine and repair the prints when they are returned by the exhibitors to the exchanges; in New York City, these employees and the men who deliver the films to the exhibitors are members of Local B 51 of the International Alliance of Theatrical Stage Employees and Moving Picture Operators of United States and Canada (hereinafter referred to as 'IATSE'), with whom plaintiff had a contract for a term commencing December 1, 1939 and expiring November 30, 1941, said employees continuing to be employed under the terms and conditions of said contract; that plaintiff could not continue in its business of distributing motion pictures without those employees; plaintiff has a contract with defendant Local 306 of the 'IATSE' for a term commencing September 1, 1935 and expiring August 31, 1945, with respect to the projection men employed in the sixty-five

theatres operated by plaintiff in the five boroughs of New York City; plaintiff also has a contract with defendant Local 306 with respect to the projection men employed at its home office and film exchange, the contract having expired on August 31, 1940; said employees have continued to be employed under its terms; in the event that plaintiff's sixty-five theatres should be unable to obtain prints and exhibit motion pictures, plaintiff would lose approximately $400,000 per week; plaintiff and seven other motion picture distributors, Columbia Pictures Corporation, Paramount Pictures, Inc., R. K. O. Radio Pictures, Inc., Twentieth Century-Fox Film Corporation, United Artists Corporation, Universal Pictures Company, Inc., and Warner Bros. Pictures, Inc., collectively distribute a majority of the feature motion pictures of quality in the New York area. Each of these companies maintains an exchange in New York City for the distribution of motion pictures in the same manner as plaintiff does and all exhibitors operating motion picture theatres in the area serviced by the New York exchanges of the plaintiff and the other distributors are dependent upon a steady and constant supply of motion pictures to enable them to continue to operate their theatres; the projectionists employed by each of the other seven distributors in their exchanges and home offices, are also members of defendant Local 306, as are the projection men employed in the theatres operated by said distributors; plaintiff and each of the other seven distributors have entered into agreements with many of the independent exhibitors licensing the exhibition of motion pictures during 1941-42, each such license agreement calling for the delivery of prints from time to time, in accordance with the booking arrangements made between the exhibitors and the exchange, throughout the contract

period, and many of these booking arrangements have some time to run; that it would be impossible for the independent exhibitors to remain in business unless plaintiff and the other distributors perform these agreements; plaintiff's revenue derived from the licensing agreements has amounted in the past to over $375,000 per year and if plaintiff were to be prevented from delivering the prints in accordance with its agreements for the 1941-42 season and from entering into new agreements, its loss would exceed $400,000."

SHERMAN ANTI-TRUST CONSENT DECREE.

"The complaint also alleges that in July, 1938, the United States of America commenced a suit in equity against plaintiff and other distributors, alleging various violations of the Sherman Anti-Trust Act, 15 U. S. C. A., §§ 1 and 2, which culminated in the entry of a consent decree against them on November 20, 1940, and which provided that the consenting defendants, including this plaintiff, were enjoined from doing certain prohibited acts; section VI of said consent decree provides that no distributor defendant (including plaintiff) shall refuse to license its pictures for exhibition in an exhibitor's theatre on some run upon terms and conditions fixed by the distributor which are not calculated to defeat the purposes of the section. The only conditions stated in section VI aforesaid, with respect to the requirement that a distributor shall not so refuse to license its pictures, are that the exhibitor satisfy reasonable minimum standards of theatre operation, that the exhibitor be reputable and responsible, and that the granting of a run on any terms to such exhibitor will not have the effect of reducing the distributor's total film revenue in the competitive area in which

such exhibitor's theatre is located; that no other defense is available to a distributor defendant in an arbitration proceeding under the decree for a 'some run' award in accordance with the provisions of said decree."

Illegal Demands of IATSE in Collective Bargaining Negotiations.

"The complaint further alleges that on December 11, 1941, referring to a proposed new contract between plaintiff and Local 306 with respect to the projection men employed at plaintiff's New York exchange and home office, defendant Local 306, by its attorney, wrote plaintiff a letter which stated in part:

> "'* * * Local 306, is requesting that the collective agreement, to be executed between our respective clients, shall provide, among other satisfactory conditions of employment, such as wages, hours, working conditions, and term of contract, the following clauses in substance:
>
> "'1. Employer agrees to supply, rent, lease, sell, deliver, license, distribute or provide films in the City of Greater New York only to such exhibitors as employ and continue to employ solely members of Local 306 as projectionists, and the Employer agrees not to supply, rent, lease, sell, deliver, license, distribute or provide film to any exhibitor in the City of Greater New York not employing members of Local 306.
>
> "'2. Members of Local 306 shall not be required, directly or indirectly, to work with, handle or work upon film, which was not or is not to be handled, transported and projected in the City of Greater New York, solely by members of the International Alliance of Theatrical Stage Employes and Moving Picture

Machine Operators of the United States and Canada, or its subsidiary locals, or the members of such union as is approved by the International Alliance, and which is recognized by one of the Central Organizations with which Local 306 is affiliated.

"'3. * * * Employer further agrees that the agency which delivers the film shall not be required to deliver and need not deliver film to any exhibitor within the City of Greater New York who does not employ and continue to employ as projectionists solely members of Local 306.

"'4. Employer agrees that film bearing the label of the International Alliance will be supplied for exhibition in the City of Greater New York only to such exhibitors as employ and continue to employ as projectionists solely members of Local 306'" [69].

IATSE Threats to Loew's Incorporated.

"The complaint then alleges that at conferences between representatives of plaintiff and Local 306, plaintiff was told that it must immediately comply with the terms and conditions set forth in the letter of December 11, 1941 or else Local 306 would immediately call out on strike its members who are employed as projectionists in plaintiff's home office and New York film exchange, and upon the request of Local 306, to be made immediately, 'IATSE' will call out on strike all the members of Local 306 who are employed as projectionists in plaintiff's sixty-five theatres in Greater New York City, all members of Local B 51 employed in plaintiff's New York exchange and all members of any affiliated unions of 'IATSE' who are employed in plaintiff's studio at Culver City, California."

IATSE Threats to Other Companies.

"Plaintiff alleges that if these threats are carried out, and strikes take place pursuant to such threats, the business of plaintiff in all its branches, *i. e.,* production, distribution, and exhibition of motion pictures, will be seriously and irreparably damaged and injured and will come to a standstill resulting in a loss of many millions of dollars. It is also alleged that the defendant Local 306 and 'IATSE' have advised plaintiff that similar demands will be made upon the other seven distributors and strikes will also be called against all of their operations in the event that they fail to comply.

"Plaintiff alleges that it has no remedy or relief and will suffer irreparable injury, unless the relief sought herein is granted, and to comply with Local 306's demands would result in plaintiff's interference with internal management of the business of the independent exhibitors and will require plaintiff to break and violate the license agreement, thereby subjecting it to claims and damage suits; that compliance with Local 306's: demands will also result in a violation of the consent decree, referred to, and that every step and portion of plaintiff's business is in interstate commerce, including the licensing and distribution of motion pictures." [69]

Loew's Incorporated Sought Federal Declaratory Relief.

"The complaint seeks a declaratory judgment pursuant to Section 274d of the Judicial Code, 28 U. S. C. A., §400; (a) that the demands of the defendant are illegal and contrary to law and compliance therewith by plaintiff is prohibited by law; (b) that in making these demands, defendant is not, and in enforcing said demands by strikes

or other means of economic compulsion, defendant would not be a person participating in a labor dispute within the meaning of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. A. §§101-115; (c) that a contract between plaintiff and defendant which would include the terms and conditions set forth in defendant's letter of December 11, 1941, would be a contract in restraint of trade in violation of the Sherman Anti-Trust Act, 26 Stat. 209, 15 U. S. C. A., §1; (d) that compliance with defendant's demand would be a violation of the consent decree in United States v. Paramount Pictures Inc., and (e) that if all of the distributors would comply with defendant's demands, a conspiracy would result which would constitute a violation of the Sherman Anti-Trust Act. 26 Stat. 209, 15 U. S. C. A., §1." [69, 70].

COURT FOUND ACTUAL CONTROVERSY EXISTED.

"There appears to be a very real controversy, since plaintiff alleges that if it complies with defendant's demands, it will be violating the law and defendant contends that the coercive action it intends to take is entirely legal and proper." [70].

COURT FOUND COMPANIES ENGAGED IN INTERSTATE COMMERCE.

"I am of the opinion that paragraphs 6, 7 and 33 of the complaint sufficiently allege the effect of defendant's acts upon interstate commerce. The business of plaintiff, a film distributor, is clearly interstate and the fact that the films stop at the exchanges prior to their shipment to the exhibitor does not deprive them of their interstate character. Binderup v. Pathe Exchange, 263 U. S. 291, 309. 44 S. Ct. 96, 68 L. Ed. 308." [70].

"The complaint plainly alleges that if plaintiff complies with defendant's demands, the exhibitors will be put out of business and if it fails to comply, the defendant's threatened action will stop all production, distribution and exhibition of motion pictures in the United States by plaintiff. See Anderson v. Shipowners, Ass'n of Pacific Coast, 272 U. S. 359, 363, 47 S. Ct. 125, 71 L. Ed. 298. where it was held that failure to allege that a combination was formed for the purposes of defeating the right of freedom to trade was immaterial, where such was the direct and necessary consequence of the combination and the acts done thereunder." [70].

Court Found Attempted Boycott Against Independent Companies.

"In the case at bar, the employer-employee relationship has no bearing. Local 306 is attempting to compel plaintiff to force the independent exhibitors whom plaintiff licenses, to employ only members of Local 306 in its projection rooms. It is in the nature of a reverse secondary boycott, where the union, instead of attempting to coerce the retailer who carries non-union goods, here attempts to coerce the distributor of union goods to stop furnishing said materials to non-union customers." [71].

Court Found IATSE Demands Would Violate Sherman Act.

"I believe that such a contract as is proposed by defendant would be subject to the condemnation of United States v. Brims, 272 U. S. 549, 47 S. Ct. 169, 71 L. Ed. 403, where it was held that a combination between a union and a non-labor group to eliminate the competition of non-union products constituted a violation of the Sherman

Act. This situation was expressly excluded from the immunities granted to labor by the Norris-LaGuardia Act in United States v. Hutcheson, *supra,* 312 U. S. at page 232, 61 S. Ct. 463, 85 L. Ed. 788. The effect of plaintiff's compliance with the demands of Local 306 would be to eliminate from the motion picture exhibition business all exhibitors who do not employ members of Local 306. The result would be that all competition, with respect to the exhibitors who did not employ members of Local 306, would be eliminated and no projectionist would be able to obtain a position, except those who are members of Local 306. The fact that plaintiff is being coerced by threat of financial ruin into such an agreement does not make it any the less an agreement between a labor and a non-labor group to eliminate the competition of theatres which were either not unionized or whose projectionists were not members of Local 306, within the condemnation of United States v. Brims, *supra,* and the explicit remarks of the court in United States v. Hutcheson, *supra,* where it was said (312 U. S. at page 232, 61 S. Ct. at page 466, 85 L. Ed. 788): 'So long as a union acts in its self-interest and does not combine with non-labor groups * * *.'"

COURT FOUND PUBLIC INTEREST INVOLVED.

"Furthermore, the effect of such action as the union threatens would be to cut off the entire supply of motion pictures all over the country in the event that plaintiff fails to comply." [72].

COURT DENIED MOTION TO DISMISS DECLARATORY SUIT.

"Accordingly, defendants motion is denied in all respects. * * *." [72].